

STATE OF MICHIGAN
COURT OF APPEALS

In re BROWN/THOMPSON, Minors.

UNPUBLISHED
February 19, 2015

Nos. 322604 and 322807
Oakland Circuit Court
Family Division
LC No. 12-801821-NA

Before: MURRAY, P.J., and HOEKSTRA and WILDER, JJ.

PER CURIAM.

In Docket Nos. 322604 and 322807, respondent mother and respondent father, respectively, appeal as of right the trial court's order terminating their parental rights. The trial court terminated respondent mother's rights to minors MLT and AJB pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). The trial court terminated respondent father's parental rights to AJB and putative child MLT pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). Respondents challenge only the trial court's best-interest determination. We affirm.

I. TERMINATION OF RESPONDENT MOTHER'S PARENTAL RIGHTS

As noted, respondent mother only argues that termination of her parental rights was not in the children's best interest. This Court reviews a trial court's finding that termination is in the children's best interest for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction a mistake has been made." *Id.* Whether termination of parental rights is in the children's best interest must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

"In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). A trial court may also consider the parent's compliance with her court ordered service plan, visitation history and the child's well-being while in foster care placement. See *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009). Each child's best interest should be considered individually, but the trial court is not required to make explicit individual findings if the best interests of the children do not significantly differ. See *In re White*, 303 Mich App 701, 715; 846 NW2d 61 (2014). The whole record may be evaluated in rendering a best interest determination. *In re JK*, 468 Mich 202, 222; 661 NW2d 216 (2003).

The evidence supported the court's finding that respondent mother complied with the terms of her court ordered service plan while sober, but when respondent mother returned to using drugs, her behavior changed. As the trial court found, respondent mother attended only five of her 12 parenting classes, was terminated from the parenting program due to nonattendance, failed to comply with drug testing requirements, tested positive for opiates, and failed to provide any documentation that she completed an assessment for substance abuse treatment. She also missed visits with the children. When respondent mother did show up, she was angry and frustrated with the children, and on at least one occasion, appeared intoxicated. She failed to stay in contact with assigned foster care worker Kenesia Cheatham, failed to attend a twice-scheduled psychological evaluation and left a detoxification program after eight days against the advice of professionals. Respondent mother's continued drug use supported the finding that termination was in the children's best interest.

Respondent mother argues that the termination petition was filed too soon. But she does not dispute the compliance failures or the finding that her drug use disrupted the children's lives. Cheatham testified that termination was in the children's best interest because of their need for permanency and stability, *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (considering the children's need for "continued stability and permanency"), and the court agreed with that testimony.

After living with stability and routine in the foster home, AJB's "attachment issues" subsided and MLT developed a close relationship with her foster mother. *In re Foster*, 285 Mich App 630, 633-635; 776 NW2d 415 (2009) (consideration of a child's progress in the foster home is "appropriate in a best-interests determination."). By contrast, there was little evidence that the children shared a parental bond with respondent mother. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004) (analyzing lack of familial bonding). Moreover, the children were also exceptionally young; the 20-month placement represented nearly half of four-year-old AJB's life and most of three-year-old MLT's life. *In re VanDalen*, 293 Mich App at 141. These factors support the trial court's order.

Finally, respondent mother argues that the trial court should have established a legal guardianship as an alternative to termination. A trial court may place a child with a guardian in lieu of terminating parental rights, but it is not required to do so if a guardianship is not in the child's best interest. See MCL 712A.19a(7)(c); *In re Mason*, 486 Mich 142, 168-169; 782 NW2d 747 (2010). Cheatham testified that a guardianship arrangement was not in the children's best interest because of respondent mother's continued drug use and her poor relationship with their foster mother. The trial court did not clearly err in declining to consider a guardianship or in finding that termination was in the children's best interest.

II. TERMINATION OF RESPONDENT FATHER'S PARENTAL RIGHTS

Respondent father also argues that termination of his parental rights was not in the children's best interest. We find no clear error.

The only portion of his court ordered service plan that respondent father completed was his psychological evaluation. He did not attend any parenting classes or individual therapy sessions. Respondent father failed to maintain contact with Cheatham and never provided proof

of adequate housing or income. Notably, and by respondent father's own account, he visited AJB only twice in the course of the child protective proceedings. It is unsurprising then, that AJB shares no bond with him. Respondent father also failed to appear at a number of hearings throughout the child protection proceedings. As Cheatham testified, respondent father has no plan to care for his child. The trial court did not clearly err in finding that termination of his parental rights was in AJB's best interest.

Finally, we separately address respondent father's rights as putative father to child MLT. The trial court directed respondent father to establish paternity over MLT within 14 days of the October 25, 2012 order of adjudication. He did not do so. Respondent father largely failed to comply with his court ordered service plan and neglected to attend hearings, even after being warned that nonparticipation would impact his legal rights to MLT. Respondent father's lack of involvement meant that MLT had no bond with him, and instead believed that her foster father was her biological father. In its order terminating parental rights, the trial court stated:

The Court finds that [MLT] has no father as defined in 3.903(A)(7). The court found probable cause to believe [respondent father] was the natural father of [the] child. The court issued notice to father, but he failed to appear at hearing[s] and failed to establish paternity with[in] the time set by the Court.

Under these circumstances, we conclude that while the trial court found that MLT has no legal father whose rights were subject to termination, the above order effectively terminated whatever rights respondent father may have had as the putative father of MLT. This is consistent with the findings concerning respondent father, which addressed both "children": "You can't plan or want to plan or provide a custodial environment for children without coming forward even, and he's been woefully lacking in that regard. The Court finds likewise that it's in the best interest of the children that father's rights be terminated." The trial court adopted these findings in its final order terminating respondents' rights.¹

The trial court terminated whatever rights respondent father had as putative father concerning child MLT. Given respondent father's nonparticipation in the court ordered service plan, the trial court did not clearly err in finding that termination of respondent father's rights was in MLT's best interest.

¹ Should the trial court address a similar issue in the future, it is suggested that its order of termination state: "The rights of the unknown father, including whatever rights [the respondent putative father] may have, are terminated." This or similar language would clarify that the order terminates the putative father's rights and prohibits him from later attempting to reestablish paternity. Further, it would ensure that the minor child is available for adoption, as the putative father's rights must be terminated before adoption may be ordered. See MCL 710.37 (providing for termination of the rights of the putative father); see, also, MCL 710.41(1) ("Except as provided in section 23d of this chapter [regarding temporary placements], a child shall not be placed in a home for the purpose of adoption until an order terminating parental rights has been entered pursuant to this chapter or chapter XIIA [the probate code, MCL 712A.1 *et seq.*] . . .").

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder